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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 272 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

NAVNITLAL RANCHHODLAL CHARITABLE TRUST

Appearance:

1. INCOME TAX REFERENCE No. 272 of 1987

MR AKIL KURESHI with MR RP BHATT for Petitioner No. 1

MR HM TALATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference relating to assessment years 1980-81 and 1981-82, the Income-tax Appellate Tribunal, Ahmedabad has referred the following five questions for our opinion under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as`the Act'). The first two questions are referred at the instance of the revenue. The next three questions are referred at the instance of the assessee. The questions are set out hereinafter.

2. At the instance of the revenue, the two questions referred are as under:-

(i) Whether, in law and on facts the assessee was entitled to exemption of 25% of the income under section 11(1)(a) of the Income Tax Act,1961?

(ii) Whether the Appellate Tribunal is right in holding that since the money had not been spent away but only substituted by a building, it must be said to have been accumulated and hence claim of exemption in respect of 25% of the income must succeed?

3. At the instance of the assessee, the three questions referred are as under:-

(i) Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that as regards the balance of 75% of the income the applicant was not entitled to exemption u/s.11 of the I.T. Act ?

(ii) Whether on the facts and circumstances of the case the Income-tax Appellate Tribunal was correct in holding that as held by the Jammu & Kashmir High Court in C.I.T. vs. Krishnachand Charitable Trust 98 ITR 387, the contention of the applicant that the provision of investment was procedural was not correct and hence exemption for the balance 75% is not admissible?

(iii) Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the decision in respect of Rule 1 BB of the Wealth-tax Rules and 7(4) of the W.T. Act do not deal with method of valuation while the sub-sec. 5(x) confers a benefit on the assessee if he invests the income

in the immovable property?

4. The facts leading to this reference, briefly stated, are as under:-

4.1 The assessee is a registered Public Charitable Trust which was granted exemption under section 11 of the Act. It was also granted exemption under section 80-G of the Act for donations made to it. For the period prior to assessment year 1980-81, the assessee's claim for exemption under section 11 was earlier not granted but subsequently it was granted upto assessment year 1979-80. For the assessment years 1980-81 and 1981-82 i.e. the years under consideration, the assessee-trust again claimed exemption under section 11 of the Act. The ITO rejected that claim on the ground that the income of the trust had been utilised for construction of a building and was not used for a charitable purpose. The ITO did not accept the assessee's claim for exemption of 25% of income under section 11(1)(a) of the Act on the ground that the income of the trust had been utilized for the purpose other than those of the assessee-trust. The assessee failed in its appeal before the CIT (Appeals). In the second appeal before the Tribunal, the assessee not only claimed the exemption of 25% of its income under section 11(1)(a) but also claimed exemption with regard to the remaining 75% of the income of the trust on the basis of the provisions of sec. 11(2)(b) read with section 5(x) of the Act which provisions were prevailing at the time of the assessment made in August, 1983 by which time the aforesaid provisions were inserted/substituted w.e.f. 1-4-1983.

4.2 The Tribunal accepted the assessee's claim for exemption of 25% of its income under section 11(1)(a) but did not accept the claim for exemption of remaining 75% of its income on the basis of the amendments made w.e.f. 1-4-1983. Hence, by the first two questions, the revenue challenges the finding of the Tribunal in favour of the assessee regarding exemption of 25% of the income under sec. 11(1)(a) of the Act.

5. Mr Akil Kureshi learned counsel for the revenue has submitted that construction of a building could not be said to be application of income of the assessee-trust for the purposes of the trust and, therefore, even 25% exemption granted by the Tribunal was not in accordance with law.

6. On the other hand, Mr Talati for the assessee has submitted that for availing of the benefit of exemption

granted by sec. 11(1)(a), it is not necessary that 25% of the income for which exemption is claimed should have been applied to the purposes of the trust because the provision itself contemplates that the income accumulated or set apart is over and above the income which is applied to the purposes of the trust in India.

7. The relevant provisions applicable for assessment years under consideration, read as under:-

Sec.11(1): Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;

8. A bare perusal of the aforesaid provision indicates that where the income derived from property held under trust wholly for charitable or religious purposes is applied to such purposes in India, exemption is granted to the full extent to which such income is applied to charitable or religious purposes in India and then there can be no question of applying 25% limit to such an application. It is only when the income of the trust is accumulated or set apart for application to such purposes in India that exemption is granted to the extent of 25% of the income of the trust. The Tribunal has rightly held that since the money of the assessee-trust had not been spent away but only substituted by a building, it can be said to have been accumulated. There is no dispute about the fact that construction of a building by the assessee-trust was for the purposes of the trust.

9. We, therefore, do not find any substance in the challenge made by Mr Kureshi for the revenue that the assessee was not entitled to claim exemption in respect of 25% income of the assessee trust.

10. In view of the above, the questions referred at the instance of the revenue will have to be answered in

the affirmative i.e. in favour of the assessee and against the revenue.

11. Coming to the questions referred at the instance of the assessee, all of them pertain to application of the balance 75% of the trust income to construction of a building. The only ground on which this claim was made before the Tribunal and was reiterated before this Court was the provisions of sec.11(2)(b) read with section 11(5)(x) as on 1-4-1983 coupled with the fact that the assessment order in the instant case was made on 25-8-1983. The learned counsel for the assessee concedes that applying the provisions of sec.11 which were in force for the assessment years under consideration, the assessee could not have claimed such exemption for the balance 75% of the investment made in the building but the learned counsel submits that the amendment made to the provisions of sec.11 w.e.f. 1-4-1983 by which exemption regarding the balance 75% of income of the trust is made available if such amount is invested in securities specified in sub-section (5) of sec. 11 or investment is made in immovable property as per clause (x) of subsection 5 of sec.11, is merely a procedural provision which would be applicable on the date on which the assessment order is passed even if such amendment is made effective after expiry of the assessment year in question.

12. We are afraid the contention cannot be accepted. Whether the trust set up for charitable or religious purposes should be granted any exemption and if yes, to what extent and by investment in what kind of securities or properties, are all matters of policy which are legislative measures and they are not mere procedural matters. For the assessment years in question, at the relevant time, subsection (2) of sec. 11 provided that where 75% of the income referred to in clause (a) or clause (b) of sub-section (1) is not applied to charitable or religious purposes in India during the previous year, but is accumulated or set apart for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the conditions stipulated in sub-section (2) are complied with. Those conditions relate to investment of the amount in Government securities and other specified securities or deposits of amount with financial corporations approved by the Government. Admittedly, investment in a building was not one of such permissible investments and, therefore, the assessee was not entitled to claim any exemption

regarding the balance 75% of the investment made by it in a building even if it was for the purposes of the trust.

13. In view of the above discussion, our answer to questions No.1, 2 and 3 referred at the instance of the assessee will have to be in the affirmative i.e. in favour of the revenue and against the assessee.

14. Accordingly, our answer to questions No.1 and 2 at the instance of the revenue is in the affirmative i.e. in favour of the assessee and against the revenue. Our answer to all the three questions referred at the instance of the assessee is in the affirmative i.e. in favour of the revenue and against the assessee.

15. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

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